SINGAPORE REPORTS

THE "BLUE FRUIT"; "BLUE FRUIT" NOW KNOWN AS "BRIGHT FRUIT", OWNERS & ORS. v. KEPPEL SHIPYARD LTD.

[C.A. (Wee Chong Jin C.J., Kulasekaram & D'Cotta JJ.) September 3, 1979]

[Singapore — Civil Appeal No. 66 of 1978]

Shipping Law — Repairs done to ship in Singapore — Claim against owners for payment — Sister ship attached as a result of action in Japan — Release on bail — Arrest of ship in Singapore — Whether action was vexatious and abuse of process of court.

The plaintiffs/respondents in this case were ship repairers. They claimed against the defendants/appellants, Universal Seaways Pte. Ltd. who were the owners of the ship "Blue Fruit" for the sum of $116,567.63 for materials supplied and repairs done to the ship at Singapore in February 1976.

The "Blue Fruit" sailed away from Singapore after completion of repairs but Universal Seaways Pte. Ltd. which had an office in Singapore, failed to meet the plaintiffs' claim.

In October 1976 the plaintiffs commenced an action in Manila where they had the ship "Blue Fruit" arrested. The Philippines Court, however, refused to entertain jurisdiction in respect thereof.

In June 1977 the plaintiffs commenced an action against Universal Seaways Pte. Ltd. in Japan where they caused a sister ship "Universal Princess" owned by Universal Seaways Pte. Ltd. to be arrested. The said sister ship was released after security was deposited in court by Universal Seaways Pte. Ltd.

In the lower court, the defendants claimed that after the repairs in question had been completed on the said vessel and prior to the issue of writ of summons, the said vessel had been sold by the previous owners, Universal Seaways Pte. Ltd., to Chunglien Navigation Co. S.A. and therefore the action *in rem* was not well-founded. Choor Singh J. held that as there was a serious dispute of fact on this issue of where the ownership of the said vessel lay at the material time it could only be satisfactorily resolved at the trial of the action and the defendants' motion was premature and should be refused.

The defendants appealed. They contended that the arrest of the said vessel in Singapore by the plaintiffs after what they had done in Yokohama was an abuse of the process of the court.

Held, dismissing the appeal: (1) even though an action is well-founded within the jurisdiction of the court there is always an inherent discretion vested in the court whether to entertain such an action or not;

(2) the finding of the lower court ought not to be disturbed as there were no circumstances which made it an abuse of the process of the court to bring the present proceedings.

Cases referred to:-

(1) *"The Goloa"* [1926] P. 103.

(2) *"The Christianborg"* (1885) 10 P.D. 141.

(3) *"The Marinero"* [1955] P. 68.

(4) *"The Reinbeck"* (1889) 6 Aspinall's M.L.C. 366.

HIGH COURT.

Loh Boon Huat for the plaintiffs.

P. Selvadurai for the defendants.

Cur. Adv. Vult.

Choor Singh J.: The defendants moved for an order that the writ of summons and all subsequent proceedings herein be set aside for want of jurisdiction *in rem* under section 4(4) of the High Court (Admiralty Jurisdiction) Act (Cap. 6), and in the alternative, that the action be stayed on the ground that it is frivolous or vexatious or an abuse of the process of court.

The facts are these. The plaintiffs who are ship repairers commenced this action *in rem* against the defendants Universal Seaways Pte. Ltd. the owners of the ship "Blue Fruit" now known as "Bright Fruit" claiming the sum of $116,567.63 being the amount due for materials supplied and repairs executed by the plaintiffs to the said ship "Blue Fruit" now known as "Bright Fruit" at the port of Singapore in the month of February 1976.

The "Blue Fruit" sailed away from Singapore after completion of repairs and Universal Seaways Pte. Ltd. who have an office at 138-A Robinson Road, Singapore, failed to meet the claim of the plaintiffs.

Some time in October 1976 the plaintiffs commenced an action in Manila where they had the ship "Blue Fruit" arrested but the plaintiffs' action was dismissed and the ship released by the Republic of Philippines Court of First Instance for "lack of personality to sue in the Philippines." The Philippines Court had refused, in the exercise of its discretion, to entertain jurisdiction in respect of the plaintiffs' claim.

The plaintiffs commenced an *in personam* action in the High Court in Singapore (Suit No. 4117 of 1976) against Universal Seaways Pte. Ltd. but this action was subsequently discontinued.

In June 1977 the plaintiffs commenced an action against Universal Seaways Pte. Ltd. in the Yokohama District Court No. 3 where they caused a sister ship "Universal Princess" owned by Universal Seaways Pte. Ltd. to be arrested. Security in the sum of 4,000,000 yen was deposited in the court by Universal Seaways Pte. Ltd. as security for the plaintiffs' claim and the "Universal Princess" was then released. Those proceedings in the Yokohama Court are still pending but the plaintiffs had offered to discontinue them and release the security obtained therein if the defendants in this action would submit to the jurisdiction of this court and agree to defend this action in the normal way.

The ship "Blue Fruit" now known as "Bright Fruit" was arrested in Singapore in the present proceedings on the 30th of January 1978.

Conditional appearance was entered in this action on the 6th of February 1978 by Chunglien Navigation Co., S.A. who claim to be the present owners of the ship "Blue Fruit" now known as "Bright Fruit". It was released from arrest on February 16, 1978 on a bail bond being furnished in the sum of $150,000 by the defendants Chunglien Navigation Co., S.A.

By their motion the defendants asked for an order that the writ of summons and all further proceedings be set aside, or alternatively, that all further proceedings be stayed. The ground on which the defendants sought to have the writ set aside was that the plaintiffs were in this action suing the wrong party. The defendants contended that the repairs to the ship in question were carried out on the request of Universal Seaways Pte. Ltd. who were the then owners of the said ship; that the ship had since that date changed hands; that it was now owned by the present defen-

dants Chunglien Navigation Co., S.A.; and that the plaintiffs had no claim against the present defendants. The plaintiffs disputed these allegations. They contended that at the date of the writ in these proceedings the ship was owned by Universal Seaways Pte. Ltd., that the legal title to the ship was transferred to Chunglien Navigation Co., S.A. by a Bill of Sale dated April 28, 1977 and that as the plaintiffs' writ had been issued on March 9, 1977 the subsequent change in ownership of the ship, did not vitiate the arrest of the ship by the plaintiffs. The plaintiffs further contended that the transfer of ownership was a sham transaction.

It seemed to me, that it was not the moment to decide whether the defendants were right or whether they were wrong in their submissions on the issues raised. In my judgment the issue of ownership at the material time, could not be decided by mere affidavit evidence. Such an important issue must go to trial. If the defendants were right on the issue raised, it may well be that in the end they will show a good defence to the action. But that, in my judgment furnished no good ground for setting these proceedings aside *in limine* and thereby depriving the plaintiffs of the right to have this issue tried. In any case, I was not satisfied on the evidence put before me, that the ship was no longer beneficially owned by Universal Seaways Pte. Ltd.

The alternative prayer in the motion was for all further proceedings to be stayed. It was submitted on behalf of the defendants that the present proceedings were frivolous or vexatious or an abuse of the process of the court. It was contended that the plaintiffs having already previously commenced proceedings in Yokohama, which proceedings were still pending, and in the course of those proceedings having arrested another ship belonging to the same owners, and in return for her release having received bail, they were not entitled to commence the present proceedings and arrest another ship and obtain bail for her release. Counsel for the defendants submitted that the plaintiffs were not entitled to have two suits proceeding at the same time in two different countries, one in Yokohama and one in Singapore, both in respect of the same claim and have double bail, one in Yokohama and another in Singapore as security for their claim. Counsel cited *"The Golaa"*[1] and *"The Christianborg"*[2] in support of his submission.

In my judgment the facts in *"The Christianborg"* and *"The Golaa"* were entirely different from the facts in this case. The principle of *"The Christianborg"* case which was applied in *"The Golaa"* and also in *"The Marinero"*[3] is this: where a defendant in order to secure the future immunity of his ship and her future ability to continue trading is forced to give security in a foreign court he cannot be compelled to give further security by the arrest of the same or sister ship in England. If, notwithstanding the security already given in the foreign proceedings, the ship is arrested again and security demanded for its release, such further arrest would constitute harassment and could be contrary to good faith and vexatious. Lord Esher observed in *"The Christianborg"*:

"I think it would be vexatious in fact to call upon the owner of the ship in respect of the same cause of action to give bail in two courts at the same time."

In the present case the security obtained in the Yokohama court was from Universal Seaways Pte. Ltd. The security given in these proceedings is by Chunglien Navigation Co., S.A. The ship arrested in the Yokohama proceedings was the "Universal Princess" which was owned by Universal Seaways Pte. Ltd. and not by the defendants. The defendants in this action have nothing to do with the proceedings in the Yokohama court. They are not the defendants in those proceedings. Accordingly they are not prejudiced in any way by the proceedings in the Yokohama court. They have not been asked to provide bail in two courts. The facts of this case are entirely different from the facts in the decisions relied upon by counsel for the defendants. In my judgment those decisions are of no help to the defendants as they are totally inapplicable to the facts of this case.

It has been stressed over and over again in the authorities that one must look at all the circumstances of the case. As was observed by Bowen L.J. in *"The Reinbeck"*[4]:

"It may well be that in actions in rem there may be circumstances which make it an abuse of the process of the court to proceed with the case, but it is material in each case to see whether it is in fact an abuse of the process of the court or contrary to good faith...."

In my judgment, there were no circumstances in this case which made it an abuse of the court to proceed with this case. The evidence was all the other way. There was good reason for the case to go to trial and the motion was therefore dismissed with costs.

From the above judgment the defendants appealed to the Court of Appeal.

COURT OF APPEAL.

Denis Murphy (*Miss Lee* with him) for the appellants.

P. Selvadurai for the respondents.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the Court): This is an appeal from the decision of the High Court dismissing the appellants' motion that the writ of summons and all subsequent proceedings in this Admiralty Action *in Rem* No. 106 of 1977 brought by the respondents, as plaintiffs, be set aside for want of jurisdiction *in rem* under section 4(4) of the High Court (Admiralty Jurisdiction) Act, Cap. 6 or in the alternative that the writ of summons and all subsequent proceedings in the action be either struck out or stayed on the ground that it is vexatious and an abuse of the process of the court.

The facts are these. The respondents, Keppel Shipyard Ltd. are ship repairers. In February 1976 the vessel "Blue Fruit" now known as "Bright Fruit" (hereinafter referred to as "the said vessel") underwent repairs in the hands of the respondents in their shipyard in the Port of Singapore. After completion of the repairs the said vessel sailed away from Singapore. The then owners, Messrs. Universal Seaways Pte. Ltd. of No. 130, Robinson Road, Singapore failed to pay the costs of the repairs and materials amounting to $97,349.05.

In October 1976 the respondents commenced an action in Manila for the costs of repairs and the said vessel was arrested but this action was however dismissed and the vessel released as the Philippines Court in Manila refused to accept jurisdiction.

The respondents also commenced in the High Court here an "In Personam" action, Suit No. 4117 of 1976, against Universal Seaways Pte. Ltd. in 1976 in respect of the same claim for the costs of the repairs to the said vessel but this action was later discontinued on March 10, 1977 after the respondents had issued the writ of summons *in rem* in the present action on March 9, 1977. However, this writ of summons was not served till January 30, 1978 on which day the said vessel was arrested. Subsequently on February 15, 1978 bail in the sum of $150,000 was furnished by Chung Lien Navigation Co., S.A. to satisfy the full amount of the claim including interest and costs and the said vessel was accordingly released.

Meanwhile in June 1977 the respondents had commenced an action against Universal Seaways Pte. Ltd. in Yokohama District Court No. 3, Japan, also in respect of the same claim for costs of repairs to the said vessel and caused the vessel "Universal Princess" owned by Universal Seaways Pte. Ltd. to be attached for purposes of obtaining security. The "Universal Princess" was released on July 7, 1977 after security in the sum of 4 million yen was deposited in court by Universal Seaways Pte. Ltd. for the full extent of the respondents' claim against them.

On the ground of want of jurisdiction the appellants claimed that after the repairs in question had been completed on the said vessel and prior to the issue of writ of summons herein, the said vessel had been sold by the previous owners, Universal Seaways Pte. Ltd., to Chung Lien Navigation Co. S.A. and therefore under section 4(4) of the High Court (Admiralty Jurisdiction) Act this action *in rem* was not well founded. The respondents, however, submit that the sale in question was only completed after the issue of this writ of summons and that at the material time the Universal Seaways Pte. Ltd. were still the owners of the said vessel. Choor Singh J. had held that as there was a serious dispute of fact on this issue of where the ownership of the said vessel lay at the material time it could only be satisfactorily resolved at the trial of the action and the defendants' motion on this ground was premature and should be refused.

The appellants at the hearing abandoned their appeal on this ground and the only issue now is whether Choor Singh J. was correct in refusing the appellants' application that the writ of summons and all subsequent proceedings in this action be struck out or stayed as being vexatious and an abuse of the process of the court.

The short point raised by the appellants is that the arrest of the said vessel in Singapore by the respondents after what they had done in Yokohama was vexatious and an abuse of the process of this court. When the respondents, having commenced proceedings in Japan in June 1977 in respect of the said claim for repairs and attached a sister ship and having obtained adequate security in the form of bail, released the sister ship, there was, it is contended, in effect an implied undertaking by the respondents that the said vessel would thereafter be free to go about trading and would not be subject to any arrest in respect of the same cause of action. So when the respondents subsequently on January 30, 1978 arrested the said vessel in Singapore and obtained bail in the sum of $150,000 as security to answer the claim in this action on the same cause of action, it is submitted that they were acting in bad faith, particularly as the Yokohama action was still pending and the bail furnished there was still subsisting. The authorities are clear that even though an action is well founded within the jurisdiction of the court there is always an inherent discretion vested in the court whether to entertain such an action or not. The appellants submit that to continue to harass them by arresting their ship in Singapore notwithstanding the provision of security in the Japanese proceedings, the respondents have acted vexatiously and contrary to good faith as to amount to an abuse of the process of the court. They rely on the decisions in *"The Christianborg"*[2] and *"The Marinero"*.[3]

The respondents on the other hand say that this appeal should be dismissed and they be allowed to proceed with this action here on their undertaking to discontinue the Yokohama District Court action and discharge the bail they have obtained there. In respect of this proposal they rely on what Baggallay L.J. said in *"The Christiansborg" case*: —

> "I take it to be established that where a plaintiff sues the same defendant in respect of the same cause of action in two courts, one in this country and another abroad, there is a jurisdiction in the courts of this country to act in one of three ways, — to put the party so suing to his election, or, without allowing him to elect, to stay all proceedings in this country, or to stay all proceedings in the foreign country... Whether you adopt the principle of putting him to his election or of staying the proceedings in one of the courts, must depend on the circumstances of the case."

As circumstances justifying an order that they be put to election, they put forward in an affidavit the following considerations:—

(1) Singapore is the *forum conveniens*.

(2) The cause of action is governed by laws of Singapore.

(3) The transactions that resulted in the plaintiffs' repairing the said vessel were concluded in Singapore and at all material times the plaintiffs and the owners of the said vessel were resident in Singapore.

(4) All the records, witnesses and evidence that would be material to this action are to be found in Singapore.

(5) Both the plaintiffs and the owners of the said vessel are foreign to the said Yokohama Court and it is uncertain if the plaintiffs' claim herein could be sustained in the said Yokohama Court under Japanese laws and procedures.

(6) The plaintiffs were constrained to commence the Yokohama proceedings because the vessel herein was keeping away from the jurisdiction of this Honourable Court in order to prevent the plaintiffs from arresting her in this jurisdiction.

(7) The transactions and agreements on which the plaintiffs' claim herein is founded have the most

substantial connection with Singapore and not with any other country of jurisdiction.

In our opinion it is clear that in all the circumstances the Singapore court is the *forum conveniens* for all the parties to the present action. The case of *"The Christiansborg", supra* relied on by the appellants is distinguishable. There two foreign ships one of which was arrested in England after its earlier arrest in Holland were involved in a collision beyond English territorial waters. Similarly, in *"The Marinero", supra* two ships were involved in a collision in Argentine waters and the owners of one of them, the "Cressington Court" wishing to found jurisdiction in Holland arrested a sister ship of the other colliding vessel, *"The Marinero"*, in Holland. Later they arrested *"The Marinero"* in England. In *"The Christiansborg"* the majority of the Court of Appeal accepted the view of Hannen J. in the court below that by accepting the security offered for the release of the offending vessel, the plaintiffs ought not in justice to be allowed to subsequently arrest the offending vessel in England on the ground that the release of that vessel by the Dutch court on satisfactory security meant "that the vessel was to continue her voyage and be useful in any part of the world to her owners and not merely that she was at liberty to navigate Dutch waters". It is to be observed, however, that both Baggallay L.J. and Fry L.J. (the majority judges) stressed that the court must examine into the circumstances of the case to see whether the English action should be stayed and the vessel released. They found no circumstance in favour of the plaintiffs.

In *"The Marinero"*, Willmer J. on the facts before him extended what he called "the principle of *"The Christiansborg"* to a case in which it is not the offending ship, but another ship belonging to the same owners, which has been the subject of arrest in foreign proceedings".

As was observed by Bowen L.J. in *"The Reinbeck"*[4]:

"It may well be that in actions *in rem* there may be circumstances which make it an abuse of the process of the court to proceed with the case, but it is material in each case to see whether it is in fact an abuse of the process of the court or contrary to good faith...."

In our judgment, taking into consideration all the circumstances of the case, we ought not to disturb the finding of Choor Singh J. that there were no circumstances which made it an abuse of the process of the court to bring the present proceedings. The appeal must be dismissed with costs, subject to the respondents' undertaking to discontinue the Japanese action and to discharge the Japanese security.

Appeal dismissed.

Solicitors: *Donaldson & Burkinshaw; Rodyk & Davidson.*

J.B. JEYARETNAM v. LEE KUAN YEW

[C.A. (Wee Chong Jin C.J., Kulasekeram and D'Cotta JJ.) September 5, 1979]

[Singapore — Civil Appeal No. 26 of 1979]

Libel and Slander — Defamation — Election Speech — Whether words capable of conveying a defamatory meaning — Effect on reasonable men — Defence of qualified privilege — Defence of fair comment — Quantum of damages — Defamation Act, (Cap. 32), s. 16.

Torts — Defamation — Election speech — References to respondent and his family.

This was an appeal from the decision of Chua J. reported at [1979] 1 M.L.J. 128 The respondent had brought an action against the appellant for defamation arising out of remarks made by the appellant in an election speech. The learned trial judge held that the words complained of bore the meaning that the respondent had procured the grant of favours to Messrs. Lee and Lee of which his wife was the senior partner and to his family and that the respondent had been guilty of nepotism and corruption and were defamatory of the respondent. The learned trial judge rejected the pleas of fair comment and qualified privilege and gave judgment for the respondent in the sum of $130,000 damages. The appellant appealed.

Held: (1) in this case it was plain that reasonable persons would be likely to understand the words in a libellous sense, that is, that the respondent had managed his fortune well by using his position as Prime Minister to procure preferential treatment for his wife and brother to to his own and their personal advantage;

(2) the learned trial judge was correct in rejecting the defence of qualified privilege, as he found that the words were published by the appellant recklessly, without an honest belief in the truth, with the intention of denigrating and insulting the respondent and that in publishing those words, the appellant was actuated by malice;

(3) the defence of fair comment must also fail in the light of the finding of the learned trial judge that the words were published by the appellant recklessly, being indifferent to their truth or falsity and that the appellant was actuated by express malice;

(4) there was no misdirection by the learned trial judge in arriving at the award of $130,000 as damages. The award was not only not excessive but was reasonable having regard to all the circumstances of the case;

(5) no evidence was given at the trial in mitigation of damages as required by section 16 of the Defamation Act and therefore the ground of appeal based on that section must fail.

Cases referred to:-

(1) *Jones v. Skelton* [1963] 1 W.L.R. 1362.

(2) *Mc Carey* v. *Associated Newspapers Ltd.* [1964] 3 All E.R. 947.

(3) *Broome* v. *Cassell & Co.* [1972] A.C. 1027.

(4) *Lewis* v. *Daily Telegraph Ltd.*, and *Lewis* v. *Associated Newspapers Ltd.* [1964] A.C. 234.

COURT OF APPEAL.

K.E. Hilborne for the appellant.

J. Grimberg for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the Court): In December 1976 the Government called a General Election and fixed December 23 as polling day. Mr. Lee Kuan Yew, the Prime Minister, opened the election campaign of the People's Action Party, the party in power, at a press conference on December 13 during which he questioned the competence of opposition leaders. He said that the pity of it was that nobody in the present opposition had it in him to oppose. He said "the public are entitled to something better, but unfortunately we are faced with an opposition whose leaders were inconsequential men unable to propound a credible alternative on how to make Singapore more viable and secure or how to